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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REPUBLICAN NATIONAL COMMITTEE,
NEVADA REPUBLICAN PARTY, and SCOTT
JOHNSTON,

Plaintiffs,

v.

FRANCISCO AGUILAR, *in his official capacity*
as Nevada Secretary of State; LORENA
PORTILLO, *in her official capacity as the*
Registrar of Voters for Clark County; WILLIAM
"SCOTT" HOEN, AMY BURGANS, STACI
LINDBERG, and JIM HINDLE, *in their official*
capacities as County Clerks,

Defendants.

No. 2:24-cv-00518-CDS-MDC

**PLAINTIFFS' MOTION
FOR LEAVE TO FILE
AMENDED COMPLAINT**

1 Consistent with the Court's October 18 order (Doc. 121), Plaintiffs move
2 for leave to file an Amended Complaint under Local Rule 15-1(b) and Federal
3 Rule of Civil Procedure 15(a)(2).

4 On October 18, 2024, this Court dismissed Plaintiffs' First Amended
5 Complaint "without prejudice." Doc. 121 at 19-20. Plaintiffs filed the amended
6 Complaint on July 2, 2024—two months before the Ninth Circuit decided
7 *Arizona Alliance for Retired Americans v. Mayes*, 117 F.4th 1165 (9th Cir.
8 2024). In *Mayes*, the Ninth Circuit "overruled" numerous previous Ninth
9 Circuit decisions in the wake of the Supreme Court's ruling concerning
10 organizational standing in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S.
11 367 (2024). *Mayes*, 117 F.4th at 1170. This Court noted that because Plaintiffs
12 "did not have the benefit of the *Mayes* case at the time it filed its amended
13 complaint, it is not wholly clear if amendment would be futile" and therefore
14 allowed Plaintiffs to "choose to file another complaint." Doc. 121 at 19-20.

15 This Court should "freely" grant Plaintiffs leave to amend their
16 jurisdictional allegations because "justice so requires." *Morongo Band of*
17 *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (cleaned up). That
18 standard is applied "with extreme liberality." *Id.* Unlike other motions, here
19 "[t]he nonmovant bears the burden of showing why amendment should not be
20 granted." *Ratcliff v. Faulkner*, No. 2:21-cv-1351, 2024 WL 4696159, at *4 (D.
21 Nev. Nov. 6, 2024) (citing *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (Fed.
22 Cir. 1986); *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987)).

23 Several factors bear on whether to grant leave to amend, "such as undue
24 delay, bad faith or dilatory motive on the part of the movant, repeated failure
25 to cure deficiencies by amendments previously allowed, undue prejudice to the
26 opposing party by virtue of allowance of the amendment, [and] futility of
27 amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
28

1 Cir. 2003) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Each factor
2 supports granting leave to amend.

3 The Plaintiffs have not unduly delayed—they’ve timely filed this motion
4 to amend. The Plaintiffs are not amending in bad faith—they’re amending in
5 response to this Court’s invitation. *See* Doc. 121 at 20. The Plaintiffs have not
6 shown a “repeated failure to cure deficiencies by amendments previously
7 allowed.” *Eminence Capital*, 316 F.3d at 1052. As this Court stated, because
8 the parties “did not have the benefit of the *Mayes* case” for the prior two
9 complaints, it was “not wholly clear if amendment would be futile.” Doc. 121 at
10 20. No party will suffer “undue prejudice” as a result of amendment. *Eminence*
11 *Capital*, 316 F.3d at 1052. At most, amendment will invite one more round of
12 briefing on a motion to dismiss.

13 And briefing on another motion to dismiss can be substantially narrowed.
14 For example, Plaintiffs are willing to forgo briefing Scott Johnston’s standing
15 in light of this Court’s ruling that he lacks an Article III injury as alleged in the
16 Amended Complaint. Plaintiffs continue to include those allegations to
17 preserve their rights, but they are willing to accept this Court’s previous ruling
18 on that issue as final (while preserving their objections) to reduce the issues
19 that need to be briefed. The parties can forgo re-litigating other issues—such
20 as the Court’s ruling that the claims are prudentially ripe, *see* Doc. 1221 at 18-
21 19—if the Defendants are willing to do the same.

22 Finally, the Plaintiffs’ proposed amendment is not futile. “Denial of leave
23 to amend on futility grounds is rare. Ordinarily, courts will defer consideration
24 of challenges to the merits of a proposed amended pleading until after leave to
25 amend is granted and the amended pleading is filed.” *Ratcliff v. Faulkner*, No.
26 2:21-cv-1351, 2024 WL 4696159, at *4 (D. Nev. Nov. 6, 2024). Plaintiffs’
27 amendment demonstrates that they are not attempting to “spend their way
28 into Article III standing.” Doc. 121 at 4 (cleaned up). Indeed, Plaintiffs have

suffered direct injury to their core activities that are sufficient to establish an Article III stake in this controversy. Those injuries are not “mere diversion of resources in response to a policy.” *Mayes*, 117 F.4th at 1175.

In addition, since this Court’s previous decision, new evidence of Defendants’ NVRA violations has been brought to light. Proposed 2d Am. Compl. ¶¶93-97. For example, the former Washoe County Registrar admitted that the County missed the federal deadline to remove inactive voters from the rolls. *Id.* ¶93. The Court should thus grant leave to amend. To the extent futility of amendment is an issue, the simplest course is to “defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed.” *Ratcliff*, 2024 WL 4696159, at *4.

For these reasons, Plaintiffs request that the Court grant them leave to file the attached Proposed Second Amended Complaint.

Dated: November 11, 2024

Respectfully submitted,

/s/ Jeffrey F. Barr

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